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V REISINGER

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF YAVAPAI**

9 **STATE OF ARIZONA,**

10 Plaintiff,

11 vs.

12 **STEVEN CARROLL DEMOCKER,**

13 Defendant.

CAUSE NO. P1300CR201001325

**STATE'S REPLY
MOTION IN LIMINE RE: CORS**

Assigned to Hon. Gary Donahoe

14 The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney and her
15 deputy undersigned hereby replies to Defendant's response to the motion for a pre-trial hearing on
16 the admissibility of business records. This reply is supported by the following memorandum of
17 points and authorities.
18

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 Defendant's response completely misses the point of the instant motion. A hearing was
21 requested to determine the admissibility of business records through testimony of relevant
22 custodians of records ("COR"). The purpose of this hearing is to establish the foundation for
23 business records that *might* be admitted into evidence in the State's case in chief. This motion
24 was prompted by Defendant's refusal to stipulate pre-trial to foundation of the business records.
25 The hearing was requested prior to trial in the hopes of shortening a lengthy trial.
26

1 The Defendant and his attorneys would be at this hearing to cross examine each witness
2 on the issue of foundation. There would not be a violation of the 6th Amendment. As such,
3 Defendant's response fails to state a valid legal or factual objection.

4 Richard Echols, the State's financial expert examined thousands of Defendant's
5 documents (approximately 12 banker size boxes) from National City Bank, Pittsford Bank, M & I
6 Bank, Chase Bank, UBS business records, MBNA credit card, National Bank of Arizona,
7 Provident Bank, American Express, Barclay Bank, Washington Mutual, Bank of America or
8 others the Defendant may inquire about. The State does not intend to list or mark these business
9 records as trial exhibits.

11 "An expert may base an opinion on facts or data in the case that the expert has been made
12 aware of or personally observed. If experts in the particular field would reasonably rely
13 on those kinds of facts or data in forming an opinion on the subject, they need not be
14 admissible for the opinion or inference to be admitted".

15 Rule 703 of the Az. Rules of Crim. Procedure.

16 Rule 705 states "Unless the court orders otherwise, an expert may state an opinion and
17 give the reasons for it without first testifying to the underlying facts or data. But the expert may
18 be required to disclose those facts or data on cross examination."

19 The business records in this case number in the thousands. It is impossible to predict what
20 specific record Mr. Echols will be cross examined on. Before the content of a business record can
21 be discussed on cross examination, it must meet the foundation requirements of Rule 803(6).
22 This rule exempts records of regularly conducted activity or more commonly referred to as
23 business records from a hearsay objection.

24 It is foreseeable, the Mr. Echols on cross examination will be asked to identify facts or
25 data from specific records he reviewed in support of his opinions. Mr. Echols can not provide the
26 foundation to get a business record admitted into evidence. Either his testimony must be

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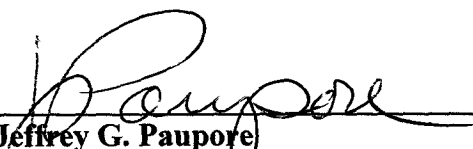
1 interrupted each time he discusses one of several different business records so a COR can be
2 called to lay the foundation or preferably he completes his testimony with an offer of proof from
3 the State that the relevant CORS will be called to lay the proper foundation.

4 **CONCLUSION**

5 The State estimates it will take an evidentiary hearing lasting 6-8 hours to accomplish the
6 testimony necessary to establish the foundation for the above referenced business records.
7

8
9 **RESPECTFULLY SUBMITTED** this 2nd day of March, 2012.

10 **Sheila Sullivan Polk**
11 **YAVAPAI COUNTY ATTORNEY**

12 By: 
13 **Jeffrey G. Paupore**
14 Deputy County Attorney

15 **COPY** of the foregoing **Emailed** this
16 2nd day of March, 2012, to:

17 Honorable Gary Donahoe
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